

REMARKS

The meeting with examiner Richard Shaffer and supervisory examiner Eduardo Robert on 21 May 2008 is acknowledged with appreciation. The examiner's summary of the interview is accurate as to what transpired at the interview.

Withdrawn claims 2-5 and 13-20 are canceled without prejudice or disclaimer of the subject matter therein. Claims 1, 6-12 and 21-22 also are canceled without prejudice or disclaimer of the subject matter therein. Applicant reserves the right to file a continuing application including the subject matter of the canceled claims.

New claims 23-39 are presented.

New claim 23 is directed to a bone instrumentation cover comprising a hollow cap encapsulating a part of a bone instrumentation which has been installed in bone, the hollow cap being adapted to provide a medically safe physical barrier between the part of the bone instrumentation and the surrounding bone and soft tissue, and the hollow cap having a fastener portion adapted for securing the cap to the bone instrumentation. None of the prior art of record teaches or suggests a cap adapted to provide a medically safe physical barrier between the part of the bone instrumentation and the surrounding bone and soft tissue as recited in claim 23. None of the prior art of record teaches or suggests a cap having a fastener portion adapted for securing the cap to the bone instrumentation as recited in claim 23. Claim 24 is dependent on claim 23 and further emphasizes the fastener by reciting the fastener portion includes a suture string for securing the cap to one of adjacent bone and adjacent tissue. Claim 25 is dependent on claim 24 and further includes suture strings connected to the hollow cap and threaded through the cinch ring for tightening the hollow cap to the cinch ring with the hollow cap extending over the bone instrumentation installed during the bone repair or reconstruction surgical procedure. The prior art does not teach or suggest these features and the additional features of further dependent claims 26-29, 35 and 37-38.

New claim 30 is directed to a bone instrumentation cover installed in vivo over the bone instrumentation comprising a hollow cap shaped to encapsulate a part of a pedicle screw which has been installed in bone of a human, the hollow cap being shaped to separate the part of the pedicle screw from surrounding bone and soft tissue, and a fastener securing the cap to the pedicle screw. This claim emphasizes that the bone instrumentation cover is for use in vivo. During the meeting with the examiners the examiner expressed some concern regarding the use

of the term *in vivo* in these claims. The undersigned has searched the U.S. Patent and Trademark Office (USPTO) on line U.S. patents using the term “*in vivo*” with respect to the claims and finds over 6,300 U.S. patents with “*in vivo*” in the claims. For example, claim 1 of U.S. patent No. 7,330,758 is directed to a heart monitoring device comprising a control circuit having an electrical connection adapted for electrical connection to a first electrode surface at a first ***in vivo*** intracardiac position relative to a heart and to a second electrode surface at a second ***in vivo*** intracardiac position relative to the heart; and said control circuit deriving an impedance value indicative of an ***in vivo*** cardiac impedance.... Thus, this term is used in the claims of thousands of U.S. patents and is accepted as proper usage in a claim.

Claim 31 is dependent on claim 30 and further requires sutures that are absorbable *in vivo* for securing the hollow cap to one of adjacent bone and adjacent tissue. The prior art of record does not teach or suggest sutures absorbable *in vivo* as recited in claim 31. The prior art does not teach or suggest these features and the additional features of further dependent claims 32-34 and 39.

Independent claim 36 is in 35 U.S.C. 112, sixth paragraph means plus function format and is directed to a bone instrumentation cover or shield comprising a cap comprising means for separating bone instrumentation which has been installed in bone *in vivo* from surrounding bone and tissue and for providing a medically safe physical barrier between the part of the bone instrumentation and the surrounding bone and soft tissue. The prior art of record does not teach or suggest means for separating bone instrumentation which has been installed in bone *in vivo* from surrounding bone and tissue and for providing a medically safe physical barrier between the part of the bone instrumentation and the surrounding bone and soft tissue as recited in claim 36.

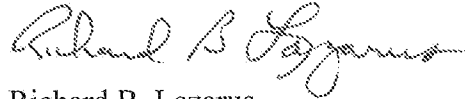
Action on the merits of all of the claims (Nos. 23-39) is respectfully requested.

If there is any issue remaining to be resolved, the examiner is invited to telephone the undersigned so that resolution can be promptly effected.

It is requested that, if necessary to effect a timely response, this paper be considered as a Petition for an Extension of Time sufficient to effect a timely response with the fee for such extensions and shortages in other fees, being charged, or any overpayment in fees being credited, to the Account of Barnes & Thornburg, Deposit Account No. 10-0435 (6714-46501).

Respectfully submitted,

BARNES & THORNBURG LLP

A handwritten signature in cursive script, appearing to read "Richard B. Lazarus", written in dark ink.

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